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Via ECFS and Overnight Delivery

April 24, 2017

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Structure and Practices of the Video Relay Service program,* CG Docket No. 10-51: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Comments of ASL Services Holdings, LLC dba Global to Further Notice of Proposed Rulemaking Sections IV.A-B and F

Dear Secretary Dortch:

ASL Services Holdings, LLC dba GlobalVRS ("GlobalVRS") submits to the Commission the attached *Comments of ASL Services Holdings, LLC dba Global to Further Notice of Proposed Rulemaking Sections IV.A-B and F,* in the above-referenced matter.

Please acknowledge receipt of this filing by date stamping and returning the additional copy of this transmittal letter in the self-addressed, postage-paid envelope enclosed for this purpose. Thank you for your attention to this matter. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

/s/ Andrew O. Isar

Andrew O. Isar

Regulatory Consultants to
ASL Services Holdings, LLC dba GlobalVRS

cc: Commissioner Legal Advisors Nicholas Degani, Amy Bender, Claude Aiken (via Email)
Karen Peltz-Strauss (via Email)
Eliot Greenwald (via Email)
Robert Aldrich (via Email)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Structure and Practices of the Video Relay Service Program	)	CG Docket No. 10-51
	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	

SUPPLEMENTAL COMMENTS OF ASL SERVICES HOLDINGS, LLC DBA GLOBALVRS TO FURTHER NOTICE OF PROPOSED RULEMAKING SECTIONS IV.A-B AND F

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April 24, 2017

SUMMARY

The Non-Dominant Providers have proposed an interim cost reimbursement proposal appropriate for the current Program environment, which is amply supported by the record and should now be adopted. A shift in conventional thinking about the Program as a competitive "market" and specialized provider efficiency must now also occur if the Commission is to successfully implement reforms and a long-term cost reimbursement methodology that will support continued provider diversity and achieve other Commission objectives in service to the Deaf Community.

Non-dominant providers have taken on significant calculated risks, achieved efficiency gains without compromising service, and in GlobalVRS' case, been able to provide higher cost specialized services without additional reimbursement, while adapting to continual reforms and declining cost reimbursement rates to continue serving the Deaf community. Such an approach is no longer sustainable without a change in Commission approach.

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COMMENTS OF ASL SERVICES HOLDINGS, LLC DBA GLOBALVRS TO FURTHER NOTICE OF PROPOSED RULEMAKING SECTIONS IV.A-B AND F

ASL Services Holdings, LLC dba GlobalVRS ("GlobalVRS") hereby submits comments regarding sections IV.A, VRS Compensation Rates; IV.B, Server-Based Routing; and IV.F, Research and Development, to the Further Notice of Proposed Rulemaking portion of the Commission's *Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order*, in the above-referenced proceeding specific to GlobalVRS.[1] GlobalVRS otherwise joins in the Non-Dominant Providers Comments.[2]

I. INTRODUCTION

The Commission's actions, proposals, and inquiries reflect a commendable enhanced consumer-oriented focus necessary to achieve long-term Telecommunications Relay Service Program ("Program") diversity, viability, and sustainability. These actions, proposals, and inquiries also represent the significant thought and effort that the Commission has undertaken to

[1] *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123*, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order*, FCC 17-26 (Rel. March 23, 2017).
[2] *Id. Joint Comments of ZVRS, Purple, Convo, and GlobalVRS* (April 24, 2017) [*Non-dominant Provider Comments*].

further Program reforms designed to improve the level of service and functional equivalency the Deaf community rightly deserves.

As GlobalVRS now enters its sixth year of providing Internet-based video relay service ("VRS"), the Company has witnessed a significant Program evolution. Many of the negative conditions that existed in November 2011 when GlobalVRS was first granted conditional authority to provide Fund-compensated services no longer exist. The Commission has successfully adopted significant reforms that rooted out the fraud, waste, and abuse, and disreputable providers. The Deaf community and Program are much better for those reforms.

Yet despite these significant Commission reforms, there remain elements of the environment GlobalVRS first experienced;

- a provider that built its dominance during a time of generous Program cost reimbursement, has solidified - indeed expanded - its dominance.
- a single provider out of five total providers that is still compensated at a rate that exceeds its allowable costs, as the Fund Administrator has established;
- no new providers have sought to provide VRS;
- interoperability remains a salient impediment that undermines competing providers;
- reforms intended to create a more playing field remain pending; [3] and
- a lingering belief that smaller companies are inherently inefficient as evidenced by an inability to achieve economies of scale.

By the time GlobalVRS began offering VRS, existing providers had been compensated for research and development costs that GlobalVRS could no longer receive; cost reimbursement rates had already declined; and GlobalVRS was at the verge of experiencing further reductions in cost reimbursement, while facing a number of significant program reforms unanticipated at the time of its entry. Today, GlobalVRS and other providers still face the challenges of meeting operational obligations, attracting investments, and continued pending reforms under a diminished reimbursement structure.

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[3] "… the VRS market structure has seen little change, in part because the structural reforms the Commission envisioned in 2013 have been slow to arrive." *2017 FNPRM* at para 87, footnotes in original omitted.

There is ample justification in the record for Commission adoption of the tiered rate reimbursement proposal in anticipation of a permanent compensation structure that directly accounts for provider costs. Other Commission proposed reforms represent a significant step closer to achieving that goal of more consumer-oriented services under a more technologically-neutral, level environment that stand to approximate a competitive market.

Yet there must also be a shift in recognition of provider efficiency as further reforms are considered. The long-held belief that provider efficiency is based on an achievable economy of scale is misplaced under the current environment and predicated on an underlying perception that the Program functions as, or at a minimum has the attributes of, a competitive "market." It does not.[4]

II. THE COMMISSION'S LONGER-TERM APPROACH REQUIRES A SHIFT IN CONVENTIONAL THINKING ABOUT PROVIDER SIZE AND A "MARKET" THAT DOES NOT CURRENTLY EXIST.

A. Economies of Scale – Size - and Efficiency are not Synonymous.

The Commission poses a series of questions pertaining to development of a longer-term provider allowable cost reimbursement methodology. Many of these questions appear predicated on a continued belief that: 1) the Program operates under conventional competitive market principals where economies of scale – size - necessarily equate to greater efficiency and lower operating costs; and 2) that all providers offering service must be similarly situated in size to be "efficient," accordingly. The Commission should rightly expect all providers to operate as efficiently as possible,[5] but recognize too that efficiency and economies of scale are not

[4] *See*, *In the Matter of Structure and Practices of the Video Relay Service Program Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123*, Expert Report of Harold Furchtgott-Roth* (April 24, 2017).

[5] "Finding that "no party . . . has presented a valid reason why the TRS Fund should support indefinitely VRS operations that are substantially less efficient," the Commission decided that, "to encourage the provision of VRS in the most efficient manner, the gap between the highest and lowest tiered rates will be reduced over time, in accordance with [the four-year transition] schedule." *2017 FNPRM* at 83.

necessarily synonymous.[6] Not all providers can become AT&Ts, Verizons, or COMCASTs even in fully competitive markets, nor should they be expected to do so.

Much has changed in the Program since the Commission enabled new providers to seek certification directly from the Commission in 2006 and certainly since GlobalVRS initiated VRS in 2011. When the Commission implemented a temporary "rate freeze," the Commission noted that the freeze would "… allow those [Tier I] providers additional time to 'reach the optimum scale to compete effectively."[7] The "rate freeze" was welcomed and mitigated the financial pressures GlobalVRS faced. Yet the underlying basis for allowable cost reimbursement has remained focused on a methodology that relies on weighted cost averages skewed by the dominant provider's costs. This structure has been demonstrated not to compensate providers for their allowable costs, despite their demonstrated efficiency gains. When the "rate freeze" period ended, GlobalVRS was no closer to reaching optimum scale and competing effectively as the Program environment remained effectively unchanged.

Continued primary reliance on economies of scale in an environment that has experienced ongoing reform, lack of full interoperability, limited providers, no new entrants, and single provider domination is fundamentally flawed because such an approach does not recognize the diversity in providers and their unique operating conditions that developed under the current Program framework. "Operating efficiency" should instead be view in accordance with its definition, "what is actually produced or performed with what can be achieved with the

[6] The Commission notes, "Although we seek to preserve a diversity of suppliers in the market, the Commission is not required to ensure the viability of every VRS competitor, no matter how inefficient." *2017 FNPRM* at 98. To be sure, inefficient providers of all sizes should not be rewarded for their inefficient operations. Providers who demonstrate continuing efficiency improvements with in "a zone of reasonableness" under current Program conditions should not, however, be deemed inefficient solely because of an inherent inability to achieve added economies of scale under current Program conditions.
[7] *Id*, citing to the *VRS Partial Rate Freeze Order*, 31 FCC Rcd at 2344-45, paras. 12-14.

same consumption of resources."[8]

Achieving economies of scale is no guarantee of efficiency. The ability to "resort to marketing tactics with little or no social welfare value,"[9] among other indicators, suggests that the largest and presumably most efficient provider has ample room for achieving greater efficiencies. A large provider is not inherently efficient despite its economy of scale.

B. A Longer-Term Cost Reimbursement Methodology Should Account for Provider Diversity.

The Commission notes that going back to 2007 the Commission adopted a tiered compensation rate structure

> to reflect likely cost differentials between small, mid-level, and large dominant providers and 'to ensure that in furtherance of promoting competition, newer providers will cover their costs and the larger and more established providers are not overcompensated due to economies of scale'[10]

This approach is as reasonable today as it was in 2007 in promoting consumer choice, the ability to offer specialized services, and recognition of potential for growth.

The Commission has considered a unitary reimbursement structure, and now asks if doing so would create potential "marketplace distortions." As noted, there is no "market" in a conventional sense under the Program as it currently exists. The entry of new, specialized providers such as GlobalVRS in 2011 created a new type of provider category that fit well with the Commission's 2007 tiered rate structure. That smaller providers and others have been challenged to increase economies of scale in the current environment has not invalidated their value in serving the Deaf Community. A natural diversity among providers has evolved consistent with what occurs in competitive markets.[11] Movement to a unitary reimbursement

[8] *See*, Business Dictionary, http://www.businessdictionary.com/definition/efficiency.html .
[9] *2017 FNPRM* at 99.
[10] *2017 FNPRM* at 81.
[11] The existence of ubiquitous McDonalds and Burger King franchises, for example, does not invalidate the value of

methodology would distort the natural provider diversity that has occurred, and further distort the difference in cost structures between providers of varying size by further failing to account for their unique cost structures under the current environment.

GlobalVRS commends the Commission's focus on provider efficiency and intent to not compensate inefficient providers. Yet when efficiency has been tied directly to economies of scale under the current environment, the basis for demonstrating "efficiency" has failed.

It is unclear that efficiency and competition should be viewed as divergent goals.[12] Because efficiency can be quantified in ways other than economies of scale, the Commission should consider alternative measures of efficiency and compensate providers that demonstrate that they can be efficient, despite their relative size, based on their specific cost structures. Simply moving to a unitary reimbursement structure in the absence implementing other pro-competitive reforms would fly in the face of the Commission's goals of promoting *efficient* diversity.

C. Program Stabilization is Needed Before Considering Appropriate Rates-of-Return or Operating Margin Approaches to Cost Reimbursement.

Since GlobalVRS' initiation of VRS, the Commission has adopted numerous reforms under an ever decreasing cost reimbursement structure that has necessitated continual adaptation in provider operations. In concept GlobalVRS supports an operating margin approach to compensation, but maintains that until Program reforms have been fully implemented, that providers are reimbursed in accordance with their individual allowable costs and that the Commission and providers have gained experience operating under a more stabilized environment, establishment of a specific rates-of-return or operating margins for providers would

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specialized gourmet hamburger restaurants that focus on specific markets and opportunities in accordance with what is realistically possible to achieve.

[12] "Is there an alternative tiered structure to that proposed below that would strike a more appropriate balance between efficiency and competition?" *2017 FNPRM* at 89.

be conceptual at best. Further, consideration of proper rates of return or operating margins have no immediate applicability if all but one provider are not being compensated for their allowable costs and unable to make investments. GlobalVRS suggests that either approach be considered under a separate rulemaking proceeding with the benefit of additional time and data that will more accurately point to appropriate metrics.

D. Cost Reimbursement Should be Based on Each Provider's Demonstrated Allowable Costs, Specialized Service Costs, and Exogenous Cost Reimbursement of Implementing Commission-Directed Reforms Regardless of Provider Size.

In keeping with the size equals economies of scale and efficiency paradigm, the Commission raises a number of questions regarding "emergent providers," new entrants that are expected to increase efficiency by achieving economies of scale through demonstrated increases in usage and "market" share. The concept of an "emergent" provider is a misnomer because of the underlying presumption that newer providers are inherently inefficient and must achieve some unstated economies of scale. Today's Tier I providers are no longer "emergent," but rather providers that have demonstrated that they operate efficiently within the Tier [13] under the Program environment as it has developed.

The *2017 FNPRM* does not address added considerations associated with the provision of specialized services such as the Spanish language and DeafBlind services provided by GlobalVRS.[14] GlobalVRS has repeatedly underscored the added costs it assumes in serving Spanish language subscribers since it began providing VRS and DeafBlind subscribers since 2016 at the Commission's request. Providing these specialized services contribute significantly

[13] The Commission states, "Conditioning the emergent provider rate on an audit to determine whether improper cost allocation is occurring may be one means of ensuring that the cost data reported actually reflects the incremental costs of a business to offer VRS alongside its other marketplace offerings." *Id* at 101. The existing audit process already ensures that providers are accurately reporting their data and inherently determines proper cost allocations for all providers. All providers should remain subject to a determination of proper cost allocation outside of the rate reimbursement structure.

[14] Specialized services are addressed under the *Notice of Inquiry on Service Quality Metrics for VRS* at para 69, albeit not in the context of compensation of additional costs assumed by specialized service providers.

to the GlobalVRS' underlying costs, but have heretofore not been considered for supplemental cost reimbursement.[15]

Further, the impact of exogenous costs associated with Commission-directed reforms that new providers faced almost immediately has not been fully considered. The *2013 VRS Reform Order* reforms introduced less than two years following GlobalVRS' initiation of VRS, included registration requirements, adoption of the User Registration Database, and SIP Profile development, among other reforms that imposed significant costs on GlobalVRS that the Company had not fully anticipated at the time it initiated its service. All providers were implicitly expected to assume as the cost of implementing these reforms without an expressed means for recouping the specific non-recurring costs associated with implementation. However critical these reforms have been to the Program, their implementation resulted in increased compliance obligations and necessitated significant operational changes for which no corresponding cost reimbursement was made. These reforms were no less significant than was implementation of ten-digit dialing, for which the Commission had explicitly allowed exogenous cost recovery.[16] [17]

[15] To be sure, GlobalVRS could elect to cease providing these specialized services to "increase efficiency" but has willingly elected to provide badly needed services for these underserved communities.

[16] *See, e.g. 2017 Report and Order on VRS Improvements*, footnote 124. The cited *2015 VRS NPRM* invited commenters to "submit [exogenous cost] estimates, with supporting data," but it had been unclear from GlobalVRS' perspective and apparently other providers, that the Commission would entertain exogenous cost reimbursement at that time.

[17] Because exogenous costs are assumed when implementing certain Program reforms, they should not be tied to per minute cost reimbursement, but viewed for what they represent; non-discretionary, one-time extraordinary expenses associated with directed reforms that should be appropriately reimbursed. The framework for exogenous cost reimbursement adopted for ten-digit dialing reimbursement should be adapted for exogenous cost reimbursement on a going forward basis, under the following general parameters:

- Provider costs should be correlated directly to a specific Commission reform that requires a significant change in provider operations, such as subscriber registration and TRS-URD implementation;
- The Commission should establish reform-specific cost reimbursement guidelines, *e.g.* what exogenous costs can be reimbursed, with provider input.
- Providers should have a fixed time frame for seeking reimbursement;
- Providers should provide full documentation supporting each cost associated with the reform for which the provider seeks reimbursement with explanation of why cost was assumed and why no alternatives existed

The Commission rightly questions "why some small providers have reported costs well above compensable rates for multiyear periods, yet have continued to offer VRS – a circumstance that appears inconsistent with the behavior of a rational firm."[18] But the question does not consider that non-dominant providers have viewed the provision of VRS at a loss as a long-term investment during a period of Program transition.

GlobalVRS cannot and will not sustain unprofitable services indefinitely. GlobalVRS has continued to provide VRS at a loss with the hopes that promised Program reforms coupled with adoption of a cost reimbursement structure that is more closely tied to efficient provider allowable costs will enable development of the type of meaningfully competitive environment and diversity that the Commission and public seek.

III. ADOPTION OF A URI SERVER-BASED ROUTING METHODOLOGY IS ACCEPTABLE AND CONSISTENT WITH COMMERCIAL PRACTICES, SO LONG AS IT DOES NOT IMPOSE GREATER BURDENS ON PROVIDERS.

The Commission proposes to amend section 64.613 of its rules to provide that the routing information provided to the TRS numbering directory may include Uniform Resource Identifiers ("URIs") that contain provider domain names rather than user IP addresses. As the Commission notes, the providers and consumer groups have supported the approach as a means to advance interoperability. GlobalVRS continues to support this and any other means to promote interoperability in a competitively-neutral manner. Lack of full interoperability has been repeatedly identified as a major contributing factor to the non-dominant provider's inability to make competitive inroads and increase their economies of scale. The proposed URI server-based routing methodology will contribute to interoperability, while also promoting use of advanced

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that would not have required company to make expenditures.

- Each request for exogenous cost reimbursement should be reviewed by the Fund Administrator;
- If a request for reimbursement is denied, the basis for denial should be provided and Providers should be given an opportunity to appeal.

[18] *Id*. at 101.

off-the shelf technologies that will limit any single provider from undermining competition through the use of proprietary technology.

IV. THE COMMISSION R&D FUNCTIONS SHOULD DIRECTLY CONTRIBUTE TO INTEROPERABILITY.

The Commission asks whether it should ensure continued funding from the TRS Fund beyond the initial $3 million budget allocated for the 2016 to 2017 TRS Fund Year, the specific purposes of such research, and its benefits.[19] Key among the considerations associated with the Commission's inquiry is how its research and development ("R&D") efforts will improve adaptation of competitively-neutral technology to achieve interoperability and reduce provider-specific dependence. Otherwise the role for Commission R&D becomes unclear and raises the issue of what that role should be.

The rate of technological advancement is staggering.[20] Technological advancement is particularly evident in the rate of new consumer-oriented technology and application innovations, not least of which are mobile computing devices. These off-the-shelf devices are being more easily adapted to enable the Deaf to communicate through use of specialized applications that are no longer proprietary-equipment dependent. The increasing shift in application rather than equipment-dependent VRS solutions suggests a reduced dependence on Commission R&D beyond promotion of full interoperability between providers – a still illusive necessity.

For too long, the dominant provider has been able to leverage proprietary equipment[21] to maintain captive control over its subscribers. Non-dominant providers have routinely

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[19] *2017 FNPRM* at 129, 130.
[20] *See, e.g.* *Technology Feels Like It's Accelerating — Because It Actually Is,* Alison E. Berman and Jason Dorrier (March 22, 2016)
[21] Formerly subsidized at least in part under the Fund.

experienced instances where the dominant providers' subscribers have held them responsible for the lack of inoperability by their own devices.[22] Use of consumer-oriented advanced technologies that can be adapted for use by providers and the Deaf community will loosen the choke hold that proprietary equipment has held on the Deaf Community.

To the extent the Commission pursues R&D efforts, those efforts should be used to identify advanced technological applications that contribute directly to interoperability among providers and to inform the public on how these applications can be used.

V. CONCLUSION.

The Non-dominant providers have proposed an interim cost reimbursement proposal appropriate for the current Program environment, which is amply supported by the record and should now be adopted. A shift in conventional thinking about the Program as a competitive "market" must now also occur if the Commission is to successfully implement reforms and a long-term cost reimbursement methodology that will support continued provider diversity and achieve other Commission objectives in service to the Deaf Community.

The Commission has imposed expectations on non-dominant providers, including rapid achievement of economies of scale, that have proven virtually impossible to achieve under a tightly regulated "market" that bears little resemblance to competitive commercial markets. In the absence of a competitive market and full interoperability between providers, and in the face of an overwhelmingly dominant provider, Commission reforms and rate reimbursement methodology have become the *de facto* "market."

Non-dominant providers have taken on significant calculated risks, achieved efficiency gains without compromising service, and in GlobalVRS' case, been able to provide higher cost

[22] Consumers rightly expect equipment to work and are more apt to blame other providers than the equipment provider for a lack of interoperability.

specialized services without additional reimbursement, while adapting to continual reforms and declining cost reimbursement rates to continue serving the Deaf community. Such an approach is no longer sustainable. Adoption of the non-dominant providers' cost reimbursement methodology will provide much needed stability to move toward the type of diverse, competitive market, interoperability, and other reforms necessary to ensure a long term, sustainable TRS Program.

Respectfully submitted this 24th day of April, 2017,

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